IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01/09/2003

Coram

The Honourable Mr.Justice N.DHINAKAR
and
The Honourable Mr.Justice M.CHOCKALINGAM

Criminal Appeal No.392 of 1995
and
Criminal Appeal No.406 of 1995

1. Solaiappa Gounder
2. Paramasivam @ Parameswaran
3. Mohandass @ Murali
4. Velusamy
5. Vinod
6. Ramasamy
7. Shanmugasundaram
8. Ponnuswamy
9. Govinda @ Govindasamy @ Jayaprakash
10.Gobu
11.Muthu @ Kathiresan @ Chinnathambi ..... Appellants in
Crl.A.No.392/1995

1. Kannan
2. Rajan alias Mahendran ..... Appellants in
Crl.A.No.406/1995

-Vs-

State of Tamil Nadu, represented
by Inspector of Police,
Podanur, Coimbatore District. ..... Respondent in
both the appeals

Prayer: Appeals against the judgment dated 6.3.1995 in Sessions Case No.193 of 1993 delivered by the First Additional Sessions Judge, Coimbatore.

!For Appellants in : V.Gopinath, Sr. Counsel
Crl.A.No.382/1995 For M/s.R.John Sathyan and
G.Anantha Rangan

For Appellants in : Mr.K.Veeraraghavan
Crl.A.No.406/1995

^For Respondent in : Mr.V.M.R.Rajendran
both the appeals Addl. Public Prosecutor

:J U D G M E N T

(Judgment of the court was delivered by N.DHINAKAR, J.)

Criminal Appeal No.392 of 1995 is by A1, A2, A4 to A10, A13 and A14 and Criminal Appeal No.406 of 1995 is by A11 and A12 in Sessions Case No.193 of 1993 on the file of the First Additional Sessions Judge, Coimbatore. The appellants in Crl.A.No.392 of 1995 will be referred to as A1, A2, A4 to A10, A13 and A14 and the appellants in Crl.A.No.40 6 of 1995 will be referred to as A11 and A12 for the sake of convenience. They were tried along with Viswanathan, who was arrayed as A3 and who was acquitted by the learned Sessions Judge, and in this judgment, the said Viswanathan will be referred to in the same order as he was arrayed before the learned Sessions Judge, for the sake of convenience. As both the appeals arise out of a single Sessions Case, they are disposed of by the following common judgment.

2. The learned Sessions Judge framed as many as 17 charges against A1 to A14. Under Charge No.1, A1 to A14 were charged under Section 14 8 IPC and under Charge No.2, A1 to A14 were charged under Section 449 IPC. The learned Sessions Judge found A1, A2, A4 to A7, A11 and A12 guilty under Section 148 IPC and sentenced each one of them to undergo rigorous imprisonment for three years and on finding them guilty under Section 449 IPC, the learned Sessions Judge sentenced each one of them to suffer seven years' rigorous imprisonment and to pay a fine of Rs.500/- with a default sentence of rigorous imprisonment for six months. Charge No.3 was framed under Section 324 IPC against A1, A4 (under two counts), A5 and A6 (under two counts) and on being found guilty, each one of them was sentenced to suffer rigorous imprisonment for one year on each count and under Charge No.4 framed under Section 324 r/w 149 IPC (two counts), A2, A3, A7 to A14 were convicted and similarly sentenced. A1, A2, A4 to A13 were charged under Charge No.5 framed under Section 307 IPC and A3 and A14 were charged under Section 307 r/w 149 IPC framed under Charge No.6, and on being found guilty, A1, A2, A4 to A7, A11 and A12 were sentenced each to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.250/- with a default sentence of three months' rigorous imprisonment, while A3, A8 to A10, A13 and A14 were acquitted. The learned Sessions Judge framed Charge No.7 under Section 302 IPC simplicitor against A4 to A6 and A8 to A14 and Charge No.8 under Section 302 r/w 149 IPC against A1 to A3 and A7 and on finding A1, A2, A4 to A7, A11 and A1 2 guilty, sentenced each one of them to imprisonment for life, while acquitting A3, A8 to A10, A13 and A14. Though the learned Sessions Judge framed a charge against A1 to A3 and A7 under Section 302 r/w 1 49 IPC under Charge No.8, A1, A2 and A7 alone were found guilty and each one of them was sentenced to imprisonment for life, while A3 was acquitted of the said charge. Charge No.9 under Section 427 IPC was framed against A1 to A14; but, the learned Sessions Judge convicted A1, A2, A4 to A7, A11 and A12 and sentenced each one of them to one year rigorous imprisonment and to pay a fine of Rs.500/- and in default of payment of fine, each one of them was directed to suffer six months' rigorous imprisonment, while acquitting A3, A8 to A10, A13 and A1 4 of the said charge. Charge No.10

as well as Charge Nos.11 and 12, which were framed against the accused for offences under Sections, 45 0, 307 and 307 r/w 149 IPC ended in acquittal. The learned Sessions Judge under Charge No.13, once again framed another charge under Section 148 IPC against A4 to A14 and on finding them guilty, sentenced each one of them to suffer rigorous imprisonment for three years. A4 to A14 were also charged under Section 506 Part-II IPC framed under Charge No.14 and on being found guilty, each one of them was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.250/- with a default sentence of three months' rigorous imprisonment. A4 to A14 were also charged under Section 3 of the Explosive Substances Act framed under Charge No.15 and under Section 4(b) of the said Act framed under Charge No.16 and each one of them was sentenced to undergo rigorous imprisonment for a period of three years under each charge. Charge No.17 was framed against A4 to A14 under Section 307 IPC and on finding them guilty, the learned Sessions Judge sentenced each one of them to suffer three years' rigorous imprisonment and to pay a fine of Rs.250/- and in default of payment of fine, each one of them was directed to undergo three months' rigorous imprisonment.

3. The allegation in the Charges Nos.1 to 12 is that the accused formed themselves into an unlawful assembly at 2.00 a.m. on 13.2.1992 and in furtherance of the common object of the said unlawful assembly, they attacked Chinnathambi, the deceased in the case, and that in the course of the same transaction, they caused injuries to P.Ws.1 to 8 and that at 3.30 a.m., they went to the house of the deceased and attacked P.Ws.9 to 13. The allegation in the Charges Nos.14 to 17 framed against A4 to A14 is that they formed another unlawful assembly at 4.30 p.m. on 13.2.1992 and in furtherance of the common object of the said unlawful assembly, threw country-made bombs and thereby, attempted to murder P.Ws.31, 32 and 34 and also threatened the witnesses. The present appeals have been filed against the said conviction and sentence.

4. The case of the prosecution is as follows:- P.W.1 is the cobrother of the deceased. P.W.9 is the wife of the deceased. P.Ws.10 and 11 are the father and the mother respectively of the deceased. P. W.12 is the sister of the deceased. P.W.14 is the nephew of the deceased. P.W.13 is the wife of P.W.14. A1 and A2 are brothers and A4 is the son of A1. A5 is the son of A2 and A5 is the nephew of A1. A7 is the brother-in-law of A1. They were all residents of Eechanari. P.W.14 was the owner of the land admeasuring 15.70 acres at Malumichempatti village and Seerapalayam village. A1, A2 and their brother's wife, Lakshmi, were cultivating the said land as tenants. A1 and A2 committed waste in the said property and therefore, an eviction petition in O.P.No.42 of 1989 was filed against them before the Special Deputy Collector (Revenue), Salem, under Section 3(2)(b)(c) of the Cultivating Tenants Protection Act. An order of eviction was passed on 20.12.1991 in favour of P.W.14 and the said order stands marked as Ex.P-3. A1 and A2, aggrieved by the said order of eviction, filed C.R.P.No.136 of 1992 before this court and the same was dismissed by the order under Ex.P-45. After the dismissal of the C.R.P., Eviction Memo, Ex.P-46, was entrusted to P.W.26, Tahsildar, Salem, for evicting the tenants and for handing over the possession of the property to the owner. P.W.25, Revenue Inspector (Eviction), Salem, gave a requisition, Ex.P-47, on 3.2.1992 asking for police protection for execution proceedings to

be conducted on 5.2.1992. On 5.2.1992, P.W.26 went to the disputed land, but was obstructed by A1 and A2 as well as by the said Lakshmi and others, who were armed with weapons. They also threatened P.W.26, P.W.30, the Village Administrative Officer of Seerapalayam Village, and P.W.31, the Village Administrative Officer of Malumichampatti Village. Therefore, P.W.26 preferred a complaint, Ex. P-48, to P.W.33, Sub-Inspector of Police, Podanur Police Station, on the basis of which, a case in Crime No.87 of 1992 was registered against the accused under Sections 147, 148, 186, 341, and 352 IPC and Ex.P-60 is a copy of the printed first information report in the said crime. Investigation was taken up in the crime and all the accused except A1 and A2 were arrested and they were released on bail on their own bonds. The possession was then handed over to P.W.14 by P.W.26. This is said to be the motive for the occurrence, which took place at 2.00 a.m. on 13.2.1992.

5. On 13.2.1992, the deceased Chinnathambi and P.Ws.1 to 8 went to the garden-land at Killakkal and took their bed. P.W.3 and P.W.8 were sleeping in the car and others were sleeping inside the farm-house. At about 2.00 a.m., 20 to 30 persons went to the garden-land, armed with aruvals and iron pipes and A4 to A7, A11 and A12 were seen in the group. P.Ws.1 to 8 and the deceased were cut and assaulted by the accused. All the injured persons including Chinnathambi, who also suffered injuries, were locked in a room and after Chinnathambi was identified by the accused, he was dragged out of the room and was cut. Thereafter, P.Ws.1 to 8, who suffered injuries, and the injured Chinnathambi were taken to Eechanari village in a lorry, M.O.3, of which the deceased was the owner. The lorry was left near a Vinayagar temple and the accused left the place. P.W.2, who suffered injuries, went and brought Mahalingam, a driver working under the deceased, and the said Mahalingam drove the lorry, M.O.3, taking the injured P.Ws.1 to 8 and Chinnathambi to Coimbatore Medical College Hospital, Coimbatore. The accused, after leaving the lorry, went to the house of the deceased at about 3.00 a.m. and knocked at the door saying that they have beaten the deceased Chinnathambi and others. The door was opened by P.W.10 and about 20 to 30 persons, who were armed with aruvals and sticks, attacked him. P.Ws.9, 11, 12 and 13 were also attacked by the said crowd. Two autos were brought by P.W.15 and some of them were taken in the auto driven by P.W.16 to Coimbatore Medical College Hospital, Coimbatore.

6. Dr.Venu Geetham, who was on duty, examined the injured Chinnathambi at 4.20 a.m. on 13.2.1992 and found on his person the following injuries:-

1.A cut injury measuring 4" x 2" x muscle-deep over the upper portion of the right hand.
2.A cut injury measuring 1" x =" x muscle-deep over the right thumb.
3.An injury measuring =" x =" on the left knee.
4.A cut injury measuring 2" x 1" x muscle-deep on the upper left hand.
5.A cut injury measuring 4" x 2" x muscle-deep on the left side of the head.
6.A cut injury measuring 2" x 1" x muscle-deep on the back of the head.

Ex.P-4 is a copy of the accident register. The doctor examined P.W.7 at 4.30 a.m. and found on his person the following injures, which he narrated in

Ex.P-5, a copy of the accident register:-

1.A cut injury measuring 3" x 2" x muscle-deep on the left wrist.
2.An injury measuring 2" x 1" above injury No.1.
3.A cut injury measuring 4" x 2" over right shoulder.
4.A cut injury measuring 6" x 4" x muscle-deep on the left thigh.
5.A cut injury measuring 1" x 1" over the left knee joint.
6.A cut injury measuring 2" x =" over the back side of the right hand.

P.W.6 was examined at 4.45 a.m. by the doctor and on his person, the following injuries were noted:-

1.A cut injury measuring 6" x 2" on the left ankle.
2.A cut injury of the size =" x =" on the left thigh.
3.A cut injury of the size 2" x =" over the centre of the head.

Ex.P-6 is a copy of the accident register issued by the doctor in respect of the injuries found on P.W.6.

7. The doctor examined P.W.4 at 4.55 a.m. and found the following injuries, which he noted in Ex.P-7, a copy of the accident register, on his person:-

1.A cut injury of the size 2" x 1" over the left thigh.
2.A cut injury measuring 1" x =" on the left elbow.
3.Three cut injuries measuring 3" x 1", 1" x =" and =" x =" on the left upper hand.
4.A cut injury of the size 2" x 1" on the left hand.
5.A cut injury of the size 2" x =" at the centre of the head.
6.A cut injury measuring 3" x 2" over the right elbow.

P.W.10 was examined at 5.05 a.m. and on his person, the following injuries were found:-

1.A cut injury measuring 2" x =" over the right ankle.
2.A cut injury of the size =" x =" near the right elbow joint.
3.A cut injury of the size 1" x =" on the left forehead.

Ex.P-8, a copy of the accident register, was issued by the doctor. At 5.15 a.m., P.W.1 was examined and the doctor found on his person, the following injuries, which he noted in Ex.P-9, a copy of the accident register:-

1.Two cut injuries measuring 2" x 1" x muscle-deep and 1" x 1" x muscle-deep on the left upper hand.
2.A cut injury measuring 4" x =" x muscle-deep over the left side of the back of chest.

8. At 5.25 a.m., the doctor examined P.W.2 and on his person, he found two cut injuries, one on the right thigh measuring 6" x 4" x muscle-deep and the other at the centre of head measuring 2" x =", which was muscle-deep. Ex.P-10 is a copy of the accident register issued by the doctor in respect of

the injuries found on P.W.2. P.W.5 was examined at 5.30 a.m. and a cut injury measuring 3" x 1", which was muscle-deep, was found over the left elbow of his person, as narrated in Ex.P-11, a copy of the accident register. The doctor found the following injuries which were found on the person of P.W.8, who was examined at 5.35 a.m.:-

1.A cut injury measuring 7" x 2" over the right palm.
2.A cut injury measuring 2" x <" x skin-deep over the right right leg.
3.A cut injury of the size =" x =" x skin-deep over the right shoulder.
4.A cut injury of the size <" x <" on the left middle finger.

Ex.P-12 is a copy of the accident register issued by the doctor.

9. In the meantime, P.Ws.9 to 13, who suffered injuries and who were taken to the hospital in two autos, were also examined by the same doctor. P.W.9 was examined at 5.40 p.m. on 13.2.1992 and on her person, the following injuries were noted:-

1. A cut injury measuring 1" x 1" x muscle-deep on the upper lip.
2.A cut injury of the size 2" x <" x muscle-deep at the centre of the head.

Ex.P-13 is a copy of the accident register. The doctor examined P.W.12 at 5.45 a.m. and on her person, he found a cut injury measuring 2" x =", which was muscle-deep, on the left side of the head and issued Ex.P-14, a copy of the accident register. At 5.50 a.m., P.W.3 was examined and an abrasion measuring =" x =" was seen on the right ankle of his person and the doctor issued Ex.P-15, a copy of the accident register. P.W.11 was examined by the doctor at 5.55 a.m. and a cut injury measuring 2" x <" with clotted blood of the size 2" x 2" was seen on the back of his head. Ex.P-16 is a copy of the accident register issued by the doctor. At 7.25 a.m., the doctor, on examining P. W.13, found on her person a swelling measuring 2" x 1" on the left elbow and issued Ex.P-17, a copy of the accident register. When the doctor questioned the deceased and the witnesses as to how they suffered injuries, they informed him that they were attacked by 30 known person. As the condition of Chinnathambi was serious, he was admitted as an in-patient and P.W.18, the doctor, treated him, and the condition of Chinnathambi later deteriorated and ultimately he passed away at 9.00 a.m. P.W.18 sent Ex.P-18, death intimation, to the Outpost Police Station, Coimbatore Medical College Hospital, Coimbatore.

10. In the meantime, on receipt of the information about the admission of the injured including Chinnathambi, P.W.33, the Sub-Inspector of Police attached to Podanur Police Station, proceeded to Coimbatore Medical Collecte Hospital, Coimbatore, and questioned P.W.1, who gave a statement. The said statement is Ex.P-1. P.W.33, at about 7.30 a.m. also recorded the statement of P.W.9, which was marked as Ex.P-2 in the case. P.W.33 returned to the police station and on the basis of Ex.P-1, registered a case in Crime No.115 of 1992 under Sections 148 and 307 IPC and prepared Ex.P-61, a copy of

the printed first information report, and on the basis of Ex.P-2, registered a case in Crime No.116 of 1992 under Sections 148 and 307 IPC and prepared Ex.P-62 a copy of the printed first information report. Investigation was taken up by P.W.34, Inspector of Police, Podanur. In the meantime, the death intimation was received from the hospital and thereafter, the crime was altered to one under Section 302 IPC and Ex.P-63 is the express report in the altered crime.

11. P.W.34, on taking up investigation in the crime, proceeded to Coimbatore Medical College Hospital, Coimbatore, after obtaining a copy of the printed first information report at the police station. Inquest over the dead body of Chinnathambi was conducted by him between noon and 3.00 p.m. in the presence of panchayatards and at the time of inquest, P.Ws.1 to 3, 13 and 14 were questioned and their statements were recorded. Ex.P-64 is the inquest report. After the inquest was over, the body was handed over with a requisition to the medical authorities for conducting autopsy.

12. On receipt of the requisition, P.W.19, Professor in Forensic Medicine, Coimbatore Medical College Hospital, Coimbatore, conducted autopsy on the body of Chinnathambi and he found the following injuries:-
1.4 x 2 cm front of left shoulder.
2.6 x 4 cm outer surface of left arm.
3.15 x = cm linear oblique on the inner surface of left arm.
4.10 x < cm oblique front of lower end of left side of chest.
5.6 x 2 = cm left cubital fossa.
6.4 cm long on the left lateral aspect of chest.
7.8 x < cm left loin.
8.12 x 5 cm lateral surface of middle of right leg.
9.3 x 2 cm lateral surface of right knee.
10.12 x 3 cm lateral surface of upper third of right thigh.
11.7 x 1 cm in the left hip region.
12.12 x < oblique linear on the right lateral aspect of chest.
13.6 x 4 cm below the right clavicle.
14.7 x 7 cm front of lower end of right arm.
15.Multiple small of varying size and shape noticed in the following areas: lower end of front of left thigh, front of left leg, front of left ankle, back of left forearm and elbow outer aspect of right ankle front of right leg and right thigh back of right forearm dorsum of right hand and back of the trunk.
16.Left index and middle fingers swollen and deformed. C/s revealed fracture of the proximal phalanx in both fingers.
17.Lacerated oblique injury 5 x 1 cm x bone-deep in the right parieto-occipital region.
18.Curved incised wound 9 x 1 cm x bone-deep in the left parietooccipital region above the left ear.
19.Oblique cut injury 9 x 3 cm x bone-deep directed lateral to medial seen on the outer surface of middle of left arm with severe cure of muscles and blood vessels and nerves.
20.Stab wound vertical 2 x 1 cm x bone-deep on the middle of front of left leg.
21.Lacerated oblique wound 1 x 1 cm muscle-deep in the upper third of right leg.

22.Vertical lacerated wound 3 x 1 cm bone-deep on the dorsum of right thumb with fracture of terminal phalanx.
23.Oblique lacerated wound 2 x 1 cm bone-deep on the lateral surface of right arm with fracture shaft of right humerus.
24.Oblique cut injury directed above downwards 12 x 4 cms bone-deep on the outer surface of upper third of right arm with severance of the muscles, blood vessels, nerves with fracture of the shaft of the right humerus.
25.Both forearms and legs were swollen, dissection revealed massive, diffuse, sub-cutaneous and inter-muscular hematoura.

The doctor issued Ex.P-20, the post-mortem certificate, with his opinion that the deceased would appear to have died of shock and haemorrhage as a result of cumulative effect of the multiple injuries sustained by him, about 6 to 12 hours prior to post-mortem.

13. In the meantime, the investigating officer, seized the bloodstained clothes of the deceased Chinnathambi under Ex.P-41 as well as the blood-stained clothes of the witness, P.W.1, under a cover of mahazar, Ex.P-65, attested by P.Ws.22 and 23. The blood-stained clothes of P.W.2 and the lorry, M.O.3, were seized under Exs.P-66 and P-67 respectively. While he was at the hospital, he came to know that the accused are present in the scene-village and therefore, proceeded to the scene-village, accompanied by P.W.28, P.W.29, P.W.30 the Village Administrative Officer of Seerapalayam village, P.W.31 the Village Administrative Officer of Malumichampatti village, P.W.32, Tahsildar, Coimbatore South, and M.O.33, the Sub-Inspector of Police. On reaching the scene-place, he deputed police constables to surround the place with a view to prevent the accused from escaping from the scene of occurrence. Thereafter, P.W.34 and the above-said officers proceeded towards the garden-land, where the accused were staying and when they were approaching the garden-land, bombs were thrown at them and undaunted by the bombs, which were hurled at them and which were exploding on all sides of the police party, the police officers approached the place and arrested A4 to A14. A4 was found in possession of M.O.41, a rexine bag, containing four bombs and M .O.42, a toy gun. P.W.34 seized M.Os.5 to 14, veecharuvals, and M.Os.15 to 28, iron pipes, along with country-made bombs, 16 in number, under a mahazar Exs.P-31 and 32 attested by witnesses. An observation mahazar, Ex.P-39, and a rough sketch, Ex.P-68, were prepared by the officer. He seized M.O.43 burnt ash, M.O.44 sample earth, M.O.45 ash, M.O.46 sample earth, M.O.47 ash and M.O.48 sample earth, from three different places, where bombs were exploded, under a mahazar Ex.P-32. He also seized M.Os.49 and 52, blood-stained cement portions, M.Os.50 and 51, sample cement portions, from two different places of the garden-land, under a mahazar Ex.P-33. He prepared Ex.P-34 for the seizure of M.O.53, bloodstained cement portion, and M.O.54, sample cement portion, from a room of the garden-land. Similarly, the officer seized a rubber stamp, M.O.55, and xerox copies of notices, M.O.56 series, under a cover of mahazar, Ex.P-35. A car bearing Registration No.TAU 5522 was seized under Ex.P-37. P.W.34 questioned P.Ws.21, 30, 31, and 32 and recorded their statements. The accused were handed over to P.W.33, the SubInspector of Police, with a direction that they may be taken to the police station. He also proceeded to the scene of occurrence, which is the subject matter of Crime No.116 of 1992, which was registered on the basis of the complaint, Ex.P-2, given by P.W.9 and

prepared an observation mahazar, Ex.P-40, and drew a rough sketch, Ex.P-69. He seized blood-stained earth and sample earth at the place under a mahazar Ex.P-38. He questioned P.W.21 and one Thangaraj and recorded their statements. He returned to the police station at 11.20 p.m. and questioned the accused. At 7.00 a.m. on 14.2.1992, he questioned P.W.8 and recorded his statement and seized M.Os.32 and 33, his blood-stained clothes, under Ex.P-70. He questioned P.W.5 at 8.00 a.m. and M.O.29 produced by him was seized under a mahazar Ex.P-71. P.W.12 was questioned at 9.00 a.m. on the same day and M.O.39, a blood-stained saree, when produced by her, was seized under Ex.P-72. P.W.11 was questioned and she produced Ex.P-37, a blood-stained saree, M.O.38, a blood-stained blouse, which were seized under a cover of mahazar Ex.P-73. He questioned P.W.6 and seized his blood-stained clothes produced by him under a mahazar Ex.P-74. He examine d P.W.9 and recorded her statement at 11.30 a.m. on the same day and the blood-stained clothes produced by her were seized under Ex.P-75. P.Ws.7, 22, 25 and 29 were examined and their statements were recorded on the same day. A4 to A1 4 were sent to court for remand. The officer gave a requisition to the motor vehicle inspector to inspect the vehicle and give a certificate. Accordingly, the motor vehicle inspector inspected the vehicle and gave his certificate, Ex.P-76. The officer questioned P.W.18, the doctor, who treated the injured, and recorded his statement. The material objects were forwarded to the court with a requisition to send them for analysis. P.W.34 gave a requisition, Ex.P-42, to the Judicial Magistrate for conducting test identification parade in respect of A4 to A14 to enable P.Ws.1, 2, 3, 4, 6 and 7 to identify them. On receipt of the requisition, P.W.24, Judicial Magistrate No.8, Coimbatore, conducted a test identification parade at 2.15 p.m. on 13.3.19 92. At the parade, P.W.1 identified A12, P.W.2 identified A4 to A6, and P.W.3 identified A4, A6, A8 and A10 to A12. A4 to A10 and A12 were identified by P.W.4 and A4, A6 and A7 were identified by P.W.6. P.W.7 identified A4 and A11. Ex.P-43 are the proceedings prepared by the learned Magistrate. A1 to A3 surrendered before the learned Judicial Magistrate, Sathiyamangalam, and on 14.4.1992, P.W.20 was examined and his statement was recorded by the officer. P.W.34 also examined P.W.19, the doctor, on 18.2.1992 and recorded his statement. After the completion of investigation, a common final report as regards Crime Nos.115 and 116 of 1992 was filed against the accused under various offences, on 29.4.1992.

14. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them and they denied all the incriminating circumstances.

15. The prosecution, before the trial court, succeeded in establishing the cause of the death of Chinnathambi by examining P.W.19, the doctor, who conducted autopsy. P.W.19 gave evidence, before the trial court, that Chinnathambi died on account of shock and haemorrhage due to the cumulative effect of the multiple injuries sustained by him and that the injuries could have been inflicted in the manner suggested by the prosecution. The fact that Chinnathambi died on account of homicidal violence, was also not disputed before the trial court nor it is disputed before this court. On the evidence, we hold that Chinnathambi died on account of homicidal violence.

16. The case of the prosecution is that at 2.00 a.m. on 13.2.1992, A1 to A14 forming themselves into an unlawful assembly, went to the garden, where the deceased and P.Ws.1 to 8 were sleeping and after causing injuries to P.Ws.1 to 8 and Chinnathambi, took them in a lorry and after leaving the lorry near the lorry-shed belonging to the deceased Chinnathambi, went to the house of the deceased at 3.30 a.m and caused injuries to P.Ws.9 to 13. The prosecution, before the trial court, examined P.Ws.1 to 8 to establish that the accused participated in the incident and caused injuries to P.Ws.1 to 8 and Chinnathambi at 2.00 a.m. and examined P.Ws.9 to 13 to prove that at 3.30 a.m., they went to the house of the deceased, where they caused injuries to the said witnesses, P.Ws.9 to 13. Of the witnesses so examined to establish the first occurrence, i.e. the occurrence which took place at 2.00 a.m., P.Ws.3, 5, 6 and 8 turned hostile. As regards the second occurrence, i.e. the occurrence which took place at 3.30 a.m., though the prosecution examined P.Ws.9 to 13, all of them turned hostile.

17. Now, we will find out whether the evidence of P.Ws.1, 2, 4 and 7 , who have supported the prosecution version, is sufficient to uphold the conviction of the accused. A perusal of the evidence of P.W.1 shows that he has implicated only A12. In his evidence, he has stated that he found A12 in the crowd and he did not even attribute any overt act to A12. In fact, A12's name is not found mentioned in the complaint, Ex.P-1, which was given by P.W.1. He has also admitted that he did not give any identifying features of A12, when he was examined by P.W.34 during investigation. He also admitted that he did not even know what was written in Ex.P-1 and that he simply signed in the said statement. In this connection, the admission of P.W.1 that he knew A1 even before the occurrence and that he did not see him at the scene of occurrence, assumes importance. If A1 had really been present at the scene of occurrence, P.W.1 would not have admitted in court that he did not see A1 at the scene of occurrence. In fact, the complaint, Ex.P-1, alleged to have been given by P.W.1, contains the name of A1 as one of the assailants. The admission of P.W.1 that he did not see A1 at the scene of occurrence along with the other accused, shows that he simply signed in the statement, which should have been prepared by someone else. His evidence is, therefore, of no use to the prosecution.

18. We will now take up the evidence of P.W.2, who has implicated only A6. P.W.2 also did not attribute any overt act to A6 and has only stated that A6 was seen in the crowd. The most damaging part of the evidence of P.W.2 is that the occurrence took place in darkness as he has admitted that there was power failure at the scene of occurrence and no lights were burning. If that be the case, it is difficult for any of the witnesses to identify any of the accused and therefore, they could not have given any identifying features of the accused to the investigating officer, when they were examined. P.W.2 also did not give any identifying features of A6 when he was examined during investigation and he also admitted that though A1 was known to him even prior to the date of incident, he was not seen by him in the crowd.

19. P.W.4 has though implicated A4 to A7, admitted that he did not know their names and he also did not attribute any overt act to any of them. In cross-examination, he has admitted that he knew A4 to A7 even prior to the date of incident and that he also knew about A1 and his sons before the

incident. P.W.4 has stated that the sons of A1 were present at the scene; but, before the trial court, only one of the sons of A1 was arrayed as accused and there is no explanation on the side of the prosecution as to which son or sons of A1 participated in the transaction. He has also admitted that it was dark at the time of incident and there was no lights burning on account of power failure. It is his further evidence that he did not give any identifying features of A4 to A7 when he was examined by the investigating officer.

20. Similarly, P.W.7's evidence is also of no use to the prosecution since he has also admitted that the occurrence took place when it was dark and that he and the other witnesses were cut while they were sleeping. He has also admitted that he did not mention the identifying features of A4 and A11 to the investigating officer and in fact, he went on to admit that he did not even say that he saw A4 and A11 standing near the lorry, though he identified A4 and A11 only on account of the fact that they were standing near the lorry. Therefore, the evidence of P.Ws.1, 2, 4 and 7 is not supportive of the prosecution version and in fact, their evidence shows that the occurrence took place when it was dark, while the witnesses and the deceased were sleeping and all the witnesses have also not stated as to who caused injuries on them. In the above background, we are of the view that it is not safe to accept their evidence to uphold the conviction of the appellants/accused.

21. We are also unable to accept the prosecution version that A4 to A14 threw country-made bombs at P.Ws.28 to 34. It is the evidence of P.W.34 that on coming to know that A4 to A14 are at the village, he went to the village, accompanied by P.Ws.28, 29, 30, 31, 32 and 33, and bombs were thrown at them. It is the evidence of P.W.32, Special Tahsildar, and P.W.34, Inspector of Police, that in spite of the fact that bombs were thrown at them, they marched forward to reach the garden-land and effected the arrest. The story of the witnesses is too tall a one to believe. If country-made bombs had been thrown at them, then at least one of them, if not all, would have suffered injuries. But, none of them has suffered even a scratch.

22. It is also strange to note that A1 to A14 were available in the village after the occurrence and if they had actually participated in the incident, they would have fled away from the village. The evidence of P.W.34 is artificial when he has deposed that he detailed police constables to surround the garden where the accused were present in order to prevent their escape. If the accused had really wanted to escape, they would have left the scene of occurrence immediately after the incident, after 2.00 a.m. or at least after 3.30 a.m. after attacking the witnesses, P.Ws.9 to 13. They did not do so; but, they were in the village waiting for the arrival of the police officers and other witnesses and it looks as if they were waiting for the police officers and other witnesses at the village to throw country-made bombs at them.

23. It is to be remembered at this stage that in Ex.P-53, a requisition, which was issued by the officer to send the explosive materials to the forensic expert, it is found mentioned that the District Collector and the Special Tahsildar of the District were also present at 4.30 p.m. in the

village. But, when the witnesses, P.Ws.32 and 34, were in the box, they totally denied their presence and we are unable to understand the reason behind the denial of the presence of the District Collector and the Special Tahsildar. The contents of the document, Ex.P-53, which is earlier in point of time, is totally contradictory to the present version given by the witnesses in court. This shows that the prosecution did not come out with a true version before the trial court and were taking steps to suppress several materials. We, therefore, do not attach any importance to the evidence of P.Ws.2 8 to 34.

24. It is also to be remembered at this stage that the subsequent occurrence, which took place at 4.30 p.m., is totally a different transaction and by no stretch of imagination, it could be said that the transaction, which took place at 4.30 p.m., is part of the transaction, which took place at 2.00 a.m., as the common object of the unlawful assembly, which, according to the prosecution, was formed at 2.00 a.m., is different from the common object of the unlawful assembly, which was allegedly formed at 4.30 p.m. We cannot but say that the learned Sessions Judge has committed an illegality in conducting a joint trial for two different transactions. The charges, which we have extracted in the earlier part of the judgment, on the face of it, show that there were three different incidents on 13.2.1992, one at 2.00 a.m., the other at 3.30 a.m. and the last one at 4.30 p.m. and the unlawful assembly, which was formed by A1 to A14 at 2.00 a.m. is totally different from the unlawful assembly which was formed by A4 to A14 at 4.30 p.m. and the purpose of the unlawful assembly formed by A1 to A14 at 2.00 a.m. and the purpose of the unlawful assembly formed by A4 to A14 at 4.30 p.m. are totally different, since even according to the allegations in the charges, the first unlawful assembly at 2.00 a.m. was formed with a view to cause the death of Chinnathambi and the other unlawful assembly at 4.30 p.m. was formed with a view to resist the arrest. Therefore, on the very face of the charges, it could be seen that the learned Sessions Judge did not care to look at Section 220 Cr.P.C. before framing the charges and in fact, the learned Sessions Judge framed two different charges under Section 148 IPC, one against A1 to A14 and the other against A4 to A14, alleging that A1 to A14 committed rioting at 2.00 a.m. on 13.2.1992 with the common object of murdering Chinnathambi and A4 to A14 committed rioting at 4.30 p.m. on the same day with a different common object, namely, to resist the arrest. A perusal of Charge Nos.3 and 5 shows that they are omnibus in nature since though under Charge No.3, A1 and A4 to A6 were charged under Section 324 IPC for causing injuries to witnesses, it is alleged in the charge that A4 and A6 have committed the offence under the said Section on two counts. Similarly, Charge No.5 though was framed against A1, A2 and A4 to A13 under Section 307 IPC, the said charge relates to the allegations against the accused for causing injuries to various persons, as could be seen from the recitals in the said charge. A reading of Charge Nos.3 and 5, therefore, indicates that there is also violation of Section 218 Cr.P.C. as there is no separate charge for distinct offences. It is, no doubt, true that if no prejudice is caused to the accused, the court can ignore the defect in charge as it is a curable irregularity in terms of Section 464 Cr. P.C.; but, a reading of Charge Nos.3 and 5 and the fact that two different transactions - one that took place at 2.00 a.m. and the other which took place at 4.30 p.m. - show that they were clubbed together, since

the two incidents cannot be termed as part of the 'same transaction', as they took place at two different points of time, and at two different places, by two different groups of persons. Hence, it cannot be said that no prejudice has been caused to the accused, by clubbing all persons and clubbing all charges. As we have already stated, the common object of the unlawful assembly which was formed by A1 to A14 at 2.00 a.m. is totally different from the common object of the unlawful assembly formed by A4 to A14 at 4.30 p.m.

25. It will be relevant, at this stage, to refer to the judgment of the Supreme Court rendered in STATE OF ANDHRA PRADESH v. GANESWARA RAO (AIR 1963 SC 1850), wherein the Supreme Court dealt with the question as to what is meant by "same transaction". The Supreme Court held that it must be ascertained whether the accused are intrinsically connected with one another and whether the offences arise out of acts so connected together as to form the same transaction. The Supreme Court, while considering Section 235 (1) of the old Code, which is in pari materia to Section 220 of the present Code, held that while providing for the joint trial for more than one offence, there must be connection between the acts and the transaction and according to this provision, there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. The Supreme Court has also observed that what is meant by "same transaction", is not defined anywhere in the Code and it will always be difficult to define precisely what the expression means. It further stated that whether the transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it is a difficult task to undertake a definition of that while the Legislature had deliberately left undefined. The Supreme Court went on to hold that there must be proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts and then, it is possible to infer that they form part of the same transaction; but, however, it is not necessary that one of the above elements should co-exist for a transaction to be regarded as the same. In the view of the Supreme Court, if several acts committed by a person show a unity of purpose or design, that would be a strong circumstance to indicate that those acts form part of the same transaction and the connection between a series of acts is an essential ingredient for those acts to constitute the same transaction and the series of acts, which constitute a transaction, must of necessity be connected with one another and if some of them stand out independently, they will not form part of the same transaction, but will constitute a different transaction or transactions.

26. Therefore, it is clear that the unlawful assembly, which was formed by A1 to A14, according to the prosecution, at 2.00 a.m. 13.2.199 2 with a common object of causing the death of Chinnathambi is one which is totally different from the unlawful assembly, which was formed by A4 to A14 at 4.30 p.m. on the same day, which, according to the prosecution, was formed with a view to resist the arrest, as the common object of the unlawful assembly, which was formed at 2.00 a.m., is different from the common object of the unlawful assembly which was formed at 4.30 p.m. The facts in the present case show that there is neither proximity of time nor place nor unity of purpose and design nor continuity of action in respect of the acts committed by the accused at 2.00 a.m. and the acts committed by the accused

at 4.30 p.m. Therefore, the learned Sessions Judge committed an error by clubbing two different transactions and conducting a single trial. There is not only misjoinder of charges, but also misjoinder of persons in this case and by no stretch of imagination, it could be stated that the accused are not prejudiced and that it is a curable irregularity, since the common objects of the two unlawful assemblies are totally different from one another. If there is misjoinder of persons amounting to manifest illegality, it has definitely caused prejudice to the accused and the entire trial, therefore, is vitiated on this ground also.

27. In the result, the appeals stand allowed and the appellants/ accused are acquitted. It is reported that the appellants/accused are on bail and hence, the bail bonds, if any, executed by them shall stand discharged. The fine amount, if any, paid by them shall be refunded.

Index : Yes
Website: Yes
sbk

To

1.The First Additional Sessions Judge, Coimbatore.
2.The First Additional Sessions Judge, Coimbatore, through the Principal Sessions Judge, Coimbatore.
3.The Chief Metropolitan Magistrate, Madras.
4.The District Collector, Coimbatore District.
5.The Public Prosecutor, Chennai.
6.The Director General of Police, Chennai.
7.The Superintendent, Central Prison, Trichy.
8.The Superintendent, Central Prison, Vellore.
9.The Superintendent, Central Prison, Coimbatore.
10.The Officer In-charge, V-6 Kulathur Police Station.
11.The Inspector of Police, Nungambakkam Police Station, Chennai.
12.The Inspector of Police, Podanur Police Station, Coimbatore District.